California Residential Foreclosure Process

Foreclosure Process

Each state has foreclosure laws that dictate the manner of foreclosure in that state. One of the most important distinctions in a foreclosure process is whether the foreclosure is conducted through the court system (judicial) or outside the court system (non-judicial). State law governs whether judicial or non-judicial foreclosure is used. Some states allow both types of foreclosure, but each state usually has one type that is more commonly used.

In states that allow both types of foreclosure, the document used to secure the mortgage (Deed of Trust) loan usually determines whether judicial or non-judicial foreclosure is used. Typically, a deed of trust allows for non-judicial foreclosure while a mortgage allows for judicial foreclosures, although some mortgages include a clause allowing the lender to sell the property without going through the court system in the case of a default.

To start a judicial foreclosure, the lender files the appropriate court action against the owner in default. Usually this is in the form of a *lis pendens* (pending lawsuit) against the owner. If it rules against the owner, the court will order a public sale of the property.

The trustee named in the deed of trust has to record a public notice of default to initiate a non-judicial foreclosure. If the owner in default does not pay off the default within a certain time frame, the trustee can schedule a public sale of the property.

California Foreclosures

Foreclosures in California are primarily administered out of court, although court foreclosures are allowed. Out-of-court foreclosures take about four months.

Pre-foreclosure Period

Court foreclosures only occur if a lender desires a deficiency judgment. This process gives a borrower up to one year to redeem the property after the foreclosure sale.

In almost all cases, foreclosures are handled out of court. The process begins when a lender files a notice of default with the county recorder identifying the default amount and the date the borrower must pay off the default. The notice is mailed to the borrower and other affected parties.

Up to five business days before the trustee's sale, the borrower may pay off the default plus any applicable costs of foreclosure and stop the foreclosure process. Three months after the notice of default is filed, the lender can schedule a trustee's sale of the property.

Notice Of Sale / Auction

At least 20 days before the trustee's sale, the notice of sale must be posted on the property and in one local public location. The notice is also published once a week for three weeks in a local newspaper, starting at least 20 days before the sale date. The notice is mailed to the borrower at least 20 days before the sale and to anyone who requests the notice. The notice must contain the date, time, and location of the sale, the property address, and the trustee's contact information. In addition, the notice of sale must be recorded with the county recorder at least 14 days before the sale.

The trustee's sale is a public auction and the property is sold to the winning bidder. At auction, an **opening bid** on the property is set by the foreclosing lender. This opening bid is usually equal to the outstanding loan balance, interest accrued, and any additional fees and attorney fees associated with the Trustee Sale. If there are no bids higher than the opening bid, the property will be purchased by the attorney conducting the sale, for the lender. A trustee's sale may be postponed by announcement at the sale. If a sale is postponed more than three times, a new notice of sale must be issued.

If this occurs, and the opening bid is not met, the property is deemed a **REO** or **Real Estate Owned**. This typically occurs because many of the properties up for sale at foreclosure auctions are worth less than the total amount owed to the bank or lender.

When a home is purchased at auction, all **junior liens** other than property taxes are wiped out. Anyone may bid at the sale, including the homeowner, the lender and any junior lien holders. If someone from the general public wins the auction, the trustee may require the full amount of the bid in cash or cashier's check at the end of the auction.

After the sale is complete, the trustee transfers ownership to the winning bidder. The homeowner does not have the right to redeem the property after the sale.

Real Estate Owned

An REO (Real Estate Owned) is a property that goes back to the mortgage company after an unsuccessful foreclosure auction. Many foreclosure auctions do not result in bids. After all, if there was enough equity in the property to satisfy the loan, the owner would have probably sold the property and paid off the bank. That is why the property ends up at a foreclosure or trustee sale.

The bank now owns the property and the mortgage loan no longer exists. The bank will handle the eviction of the previous owners, if necessary, and may do some repairs. They will negotiate with the IRS for removal of tax liens, if any, and pay off any homeowner's association dues. Once a bank owns the property, they generally list the property for sale.